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| 09/914,816 | 12/27/2001 | Hans-Peter Stang | 23476CPT/US | 2964 |
| 7590 03/29/2004 | | | EXAMINER | |
| Martin A Farber 866 United National Plaza Suite 473 New York, NY 10017 | | | STINSON, FRANKIE L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1746 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,816

Applicant(s)

Examiner

FRANKIE L. STINSON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 0204.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The indicated allowability of claim 32 is withdrawn in view of the newly discovered reference(s) to Yamakita U. S. Pat. No. 5,359,757. Rejections based on the newly cited reference(s) follow.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the removal by suction taking place horizontally and/or vertical as claimed in claim 26, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 19-26, 28,36 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Yamakita, Habib, Kutz et al., in view of either Cecere or Gerard et al. (hereinafter, "the applied prior art").

Re claims 19 and 35, Yamakita, and Habib and Kutz, are each cited disclosing a fabric treating installation (dyeing in Yamakita, col. 5, line13, and in Habib, col. 3, line 31) with the fabric being passed through liquor (8 in Kutz and *dyeing liquor* in Yamakita and Habib) followed by removal of an excess amount, where the fabric is guided through a suction nozzle (15 in Kutz, 6 in Yamakita and 19 in Habib) disposed downstream of the

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liquor that differs from the claim only in the recitation of the suction nozzle being width-adapted. Cecere and Gerard are both cited disclosing a suction nozzle for removing an excess amount of liquid from textile fabric where there is provided a suction nozzle (20 in Gerard and 10 in Cecere) that is width-adaptable. It therefore would have been obvious to one having ordinary skill in the art to modify the nozzle of either Kutz, Yamakita or Habib, to have their respective suction nozzle width-adaptable as taught by either Cecere or Gerard, for the purpose of allowing for the removal of moisture from webs of varying width. As for the term "narrow", the same is a relative term and has therefore not been given the effect of a limitation. With respect to the intended use of dyeing in claim 19, please note that the same has not been afforded the weight of a limitation in that the body of the claims fails to recite any limitation that would limit the device for dyeing only. As for the functional language of the suction nozzle removing an excess amount of dye liquor under equalization of dye penetration, especially in a region of longitudinal bordering edged, please note that since no additional structure has been included with this functional language, and since all of the structure claimed is disclosed in the applied prior art, the functional language is therefore deemed to be inherent in Kutz, Yamakita and Habib as proposedly modified. Attention is also directed to Cecere (col.2, lines 18-23) disclosing that effective sealing and the edges (borders) and Gerard (col. 2, lines 18-22) disclosing that the suction is confined to the fabric itself regardless of any variation in width. Re claims 32, Yamakita discloses a dyeing installation for narrow textile fabric (2), the narrow fabric (2) being passed through a dyeing liquor (c), followed by removal of an excess amount, wherein the narrow fabric

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(2) is guided along a suction nozzle, disposed downstream of the dyeing liquor, wherein the removal by suction from the narrow fabric (2) is carried out while it runs through spirally that differs from the claim only in the recitation of the suction nozzle being width-adapted. Cecere and Gerard are cited disclosing in an installation for treating textile fabric where there is provided a suction nozzle being width-adapted. It therefore would have been obvious to one having ordinary skill in the art to modify the nozzle in Yamakita, to be width-adapted as taught by either Cecere or Gerard, for the purpose of allowing for the removal of moisture from fabric webs of varying width. Re claim 20, Kutz discloses the suction removal taking place between two passes (7, 7') of the fabric through the liquor. Re claim 21, Kutz, Habib, Gerard and Cecere disclose the removal by suction being carried out at right angles the direction of movement. Re claims 22 and 23, to have the fabric to be that of inelastic or elastic material is deemed to be an obvious matter of design in that the devices of Kutz, Habib, Yamakita could obviously be used to treat webs of various materials. See MPEP 2144.06, "SUBSTITUTING EQUIVALENTS KNOWN FOR THE SAME PURPOSE". Re claim 24, Kutz discloses the screen belt (19). Re claims 25, Yamakita discloses the suction removal taking place upward and/or downwardly direction. Re claim 26 Yamakita, Kutz, Habib, Gerard and Cecere disclose the removal taking place horizontally and/or vertically. Re claim 28, Habib discloses the upstream squeezing (as at 14). Re claim 29, Yamakita discloses the removal is carried out from a plurality of narrow fabrics parallel to one another. Re claim 30, Habib discloses the separator (23) as claimed. Re claim 31, Yamakita discloses the removal taking place through a plurality of layers. Re claim 33, Yamakita

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the two deflecting rollers (2, 3) for guiding the fabric spirally. Re claim 34, Yamakita discloses the suction removal by suction is simultaneously applied to the fabric "strands". Re claim 36, Kutz discloses the fabric being passed a number of times through the liquor (7, 7', 7'') and subjected to suction removal by suction nozzle (15).

6. Claim 27 rejected under 35 U.S.C. 103(a) as being unpatentable over the applied prior art as applied to claim 19 above, and further in view of Klein.

Claim 27 defines over the applied prior art only in the recitation of the suction taking place at an inclination with respect to the fabric. Klein discloses the suction removal taking place at an inclination (as at 34, 35). It therefore would have been obvious to one having ordinary skill in the art to modify the installation of either Kutz, Habib or Yamakita, to be removed at an inclination as taught by Klein, since this is deemed the substitution of equivalents, known for the same purpose (see MPEP 2144.06).

7. Applicant's arguments with respect to claims 19-36 have been considered but are moot in view of the new ground(s) of rejection.

However, in regard to the remarks on the references removing water, please note the recitation of dyeing has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). As for the added functional language please note that >While features of an apparatus may be recited either structurally or

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functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). (MPEP 2114). In regard to Kutz disclosing the upstream squeeze of the fabric to remove liquor there from. Upon the reading of the patent, no recitation of the rollers (12) squeezing liquor from the fabric could be found. This argument is therefore considered to be conjecture. In regard to the applied prior art failing to disclose the functional language of "removing an excess amount", please note the following. In re Schreiber, 128 F.3d 1473, 44 USPQ2d 1429 (Fed. Cir. 1997), the court affirmed a finding that a prior patent to a conical spout used primarily to dispense oil from an oil can inherently performed the functions recited in applicant's claim to a conical container top for dispensing popped popcorn. The examiner had asserted inherency based on the structural similarity between the patented spout and applicant's disclosed top, i.e., both structures had the same general shape. The court stated: [N]othing in Schreiber's [applicant's] claim suggests that Schreiber's container is of a different shape' than Harz's [patent]. In fact, [] an embodiment according to Harz (Fig. 5) and the embodiment depicted in Fig. 1 of Schreiber's application have

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the same general shape. For that reason, the examiner was justified in concluding that the opening of a conically shaped top as disclosed by Harz is inherently of a size sufficient to allow [] several kernels of popped popcorn to pass through at the same time' and that the taper of Harz's conically shaped top is inherently of such a shape as to by itself jam up the popped popcorn before the end of the cone and permit the dispensing of only a few kernels at a shake of a package when the top is mounted to the container.' The examiner therefore correctly found that Harz established a prima facie case of anticipation. Also note that Gerard discloses that the "hydroextractor embodies means for varying the amount of suction applied to the fabric whereby the optimum amount of moisture remains".

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In Rose et al., Serva, Lehtinen et al., Smith, Jr., Japan'568, Trachtenberg, Lynch, Grodin et al., Germany'408 and Bolton, note the suction removal means .

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANKIE L. STINSON whose telephone number is (571) 272-1308. The examiner can normally be reached M-F from 5:30 a.m. to 2:00 p.m. and some Saturdays from 5:30 a.m. to 11:30 a.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to TECHNOLOGY CENTER 1700 (571) 272-1700.

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Any inquiry for missing parts of this Office Action (copies of references, pages, forms etc.), contact the TEAM LEADER Ms. Nicol Scott (571) 272-1045.

fls

A handwritten signature in black ink, appearing to read "Frankie L. Stinson". The signature is written in a cursive, flowing style.

FRANKIE L. STINSON
Primary Examiner
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